

COMPLAINT

INTRODUCTION

JURISDICTION AND VENUE

PLAINTIFF'S COMPLAINT

1 which grants this court supplemental jurisdiction over state law claims because those claims are
2 related to Plaintiff's federal claims and arise out of the same nucleus of related facts and form
3 part of the same case or controversy under Article III of the United States Constitution.

4 3. Defendant conducts business and has an office in the Commonwealth of
5 Pennsylvania and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391.

7 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
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10 PARTIES

11 6. Plaintiff is a natural person residing in Yorba Linda, California, 92886.

12 7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

13 8. Defendant is a national debt collection company with its corporate headquarters
14 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

15 9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6),
16 and repeatedly contacted Plaintiff in an attempt to collect a debt.

17 10. Defendant acted through its agents, employees, officers, members, directors,
18 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
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21 PRELIMINARY STATEMENT

22 11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute,
23 which prohibits a catalog of activities in connection with the collection of debts by third parties.
24 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
25 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,

1 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
2 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
3 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
4 unconscionable conduct, both generally and in a specific list of disapproved practices.

5 12. In particular, the FDCPA broadly enumerates several practices considered
6 contrary to its stated purpose, and forbids debt collectors from taking such action. The
7 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
8 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
9 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
10 collector may not use any false, deceptive, or misleading representation or means in connection
11 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
12 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
13 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
14 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
15 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
16 connection with the collection of a debt.

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18 13. In enacting the FDCPA, the United States Congress found that “[t]here is
19 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
20 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
21 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
22 additionally found existing laws and procedures for redressing debt collection injuries to be
23 inadequate to protect consumers. 15 U.S.C. § 1692b.
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1 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
2 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
3 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
4 collection practices are not competitively disadvantaged, and to promote consistent State action
5 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
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7 8 **FACTUAL ALLEGATIONS**

9 15. At all times relevant to this matter, Plaintiff was an individual residing within the
10 State of California.

11 16. At all relevant times, Defendant conducted business within the State of
12 California.

13 17. Defendant is a third party debt collector as envisioned by the California
14 legislature pursuant to Cal. Civ. Code §1812.700(a).

15 18. Plaintiff is alleged to have incurred certain financial obligations.

16 19. These financial obligations were primarily for person, family or household
17 purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

18 20. These financial obligations were money, property, or their equivalent, which is
19 due or owing, or alleged to be due or owing, from a natural person to another person and are
20 therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer
21 debt” as that term is defined by California Civil Code §1788.2(f).
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23 21. Beginning in or around August 2010 and continuing through October 2010,
24 Defendant engaged in debt collection activities seeking payment from Plaintiff.

25 22. Defendant harassed Plaintiff by making continuous calls to his home and cellular

1 telephone numbers.

2 23. Plaintiff received phone calls and voicemail messages from Defendant on a
3 number of occasions from the following phone numbers: (310) 862-9032 and (714) 364-4421,
4 which the undersigned has confirmed are phone numbers belonging to Defendant.

5 24. Defendant placed repeated calls to Plaintiff's telephone almost every day, causing
6 Plaintiff to receive, on average, more than two (2) collection calls a day, and at times, more than
7 four (4) collection calls a day.

8 25. Defendant repeated calls to Plaintiff's home and cellular telephones caused
9 Plaintiff to receive, on average, more than ten (10) collection calls a week and, at times, more
10 than twenty (20) collection calls a month.

11 26. Within five (5) days after the initial communication with Plaintiff back in August
12 2010, Defendant failed to send written notification to Plaintiff advising him of his rights to
13 dispute the debt and/or request verification of the debt,
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15 27. Defendant's actions in attempting to collect the alleged debt were harassing,
16 abusive and highly deceptive.
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18 CONSTRUCTION OF APPLICABLE LAW

19 28. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
20 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
21 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
22 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
23 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
24 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).
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1 29. The FDCPA is a remedial statute, and therefore must be construed liberally in
2 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
3 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
4 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the
5 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
6 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
7 2002).

8 30. The FDCPA is to be interpreted in accordance with the “least sophisticated”
9 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
10 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
11 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
12 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
13 and the fact that a false statement may be obviously false to those who are trained and
14 experienced does not change its character, nor take away its power to deceive others less
15 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
16 ensures protection of all consumers, even naive and trusting, against deceptive collection
17 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
18 collection notices. Clomon, 988 F. 2d at 1318.
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COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

31. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- c. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- d. Defendant violated §1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- e. Defendant violated §1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt;
- f. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT
§§ 1788-1788.32 (RFDCPA)

32. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

33. The Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code

§§1788-1788.32, prohibits debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. See Cal. Civil Code § 1788.1(b).

34. Plaintiff avers that Defendant performed debt collection activities in an attempt to collect a debt allegedly owed to it.

35. In those instances where Defendant performed debt collection activities, Defendant's conduct violated the RFDCPA.

36. Plaintiff is a "person" as that term is defined in Cal. Civ. Code § 1788.2(g).

37. Plaintiff is a "debtor" as that term is defined in Cal. Civ. Code § 1788.2(h).

38. Defendant is a "debt collector" as that term is defined in Cal. Civ. Code § 1788.2(c).

39. Defendant's conduct violated the RFDCPA in multiple ways, including but not limited to:

- a. Causing Plaintiff's telephone to ring repeatedly in connection with the collection of a debt in violation of Cal. Civ. Code § 1788.11(d);
- b. Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances in violation of Cal. Civ. Code § 1788.11(e);

40. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

1 WHEREFORE, Plaintiff, DAVID E. FALCON, respectfully prays for a judgment as
2 follows:

- 3 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
4 1692k(a)(1);
- 5 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
6 15 U.S.C. § 1692k(a)(2)(A);
- 7 c. Statutory damages of \$1,000.00, pursuant to California Civil Code §
8 1788.30(b);
- 9 d. All reasonable attorneys' fees, witness fees, court costs and other litigation
10 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3) and California
11 Civil Code § 1788.30(c); and
- 12 e. Any other relief deemed appropriate by this Honorable Court.
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17 **DEMAND FOR JURY TRIAL**

18 PLEASE TAKE NOTICE that Plaintiff, DAVID E. FALCON, demands a jury trial in
19 this case.
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22 RESPECTFULLY SUBMITTED,
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1 DATED: 06/17/11

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2
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